IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.140 OF 2001

Gopalgir Ramgir Gosavi
(since deceased through L.Rs) & ors. ...Appellants

Vs.

The Charity Commissioner,Nasik & Others ...Respondents

Mr.P.N.Joshi for the Appellants
Ms G.P.Mulekar,A.G.P. for Respondent Nos.1 and 2
Mr.J.N.Pawar for the Respondent Nos.3

CORAM: A.S.OKA, J.
DATED: JULY 25,2006.

P.C.:

1. Heard Shri Joshi appearing for the Appellants. The Appellants are the legal representatives of one Gopalgir Ramgir Gosavi. An order was passed by the Assistant Charity Commissioner, Nashik under section 50-A (1) of Bombay Public Trusts Act, 1950 by which the scheme of a public trust by the name Jagannath Mandir, Tapovan, Nashik was framed. The said order was challenged by the deceased Gopalgir Gosavi by preferring an Application under Section 72 of the said Act of 1950. The said application has been rejected by the learned Additional District Judge.

2. Shri Joshi for the Appellants invited my attention to the averments made in the Civil Application No.580/2001 which is an application made for production of additional evidence. He submitted that the documents annexed to the said

application show that the property was in fact ancestral property in the hands of deceased Gopalgir Gosavi. He submitted that due to old age, the deceased Gopalgir Gosavi could not produce the said evidence. He submitted that the application for additional evidence may be allowed to enable the Appellant to lead further evidence. He submitted that the documents which are annexed to the Application establish the title of the deceased Gopalgir Gosavi.

3. I have considered the submissions. The learned Additional District Judge in paragraph 7 of the impugned Judgment has noted that the Appellants have not led any evidence before the learned Assistant Charity Commissioner. The learned Additional District Judge has observed that an order of remand was passed earlier in favour of the deceased Gopalgir to enable him to adduce evidence. However, after the order of remand was passed, he failed to produce any evidence. An order was passed by the Deputy Charity Commissioner in the year 1985 for framing the scheme. By order dated 4th August 1992 passed on earlier application under section 72 of the said Act filed by the deceased Gopalgir Gosavi, the learned Additional District Judge remanded the matter for a fresh enquiry. After the order of remand, the matter was decided afresh by the learned Assistant Charity Commission on 14th January 1994. In paragraph 8 of the order dated 14th January 1994 the learned Assistant Charity Commissioner has observed thus :

"8. The Hon’ble District Court remanded the matter with a specific direction i.e. to give an opportunity to the opponent to adduce evidence. But after remand the opponent failed to adduce evidence. On the contrary, he played all the tactics to get the matter adjourned on each date fixed for hearing on some or other flimsy grounds. The tactics of the opponent can be inferred of making abused of the procedure of law. It is quite evidence that the opponent has nothing to show that the property which is recorded as trust property has either is self-acquired property or it is an ancestral property."

. The opponent referred to in the said order is deceased Gopalgir.

4. In paragraph 12 of the said order, the Assistant Charity Commissioner has noted that the deceased Gopalgir Gosavi did not adduce any oral or documentary evidence. If this is the conduct, at this stage, after lapse of such a long time, I the application for additional evidence cannot be considered and the same deserves to be rejected. Accordingly, Civil Application stands rejected.

5. It may not be out of place to note here that in the

impugned Judgment and Order the learned Additional District Judge has observed that deceased Gopalgir himself applied for registration of the public trust under the provisions of the said Act of 1950. The deceased Gopalgir claimed in the Application that he was the sole trustee. He stated in the said Application for registration that the property which is now claimed as his personal property was a trust property. Thus, there is no reason to interfere with the aforesaid order dated 14th January 1994 passed by the Assistant Charity Commissioner by which he framed a scheme for administration of the said trust. As there is no merit in the Appeal, the same is dismissed with no order as to costs.

Judge.